

January 13, 2003

BY HAND

Mary Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2nd Floor  
Boston, MA 02110

RE: Boston Gas Company d/b/a Keyspan Energy Delivery New England, D.T.E. 03-1

Dear Secretary Cottrell:

On January 3, 2002, the Boston Gas Company d/b/a Keyspan Energy Delivery New England ("Boston Gas" or "Company") filed a request with the Department of Telecommunications and Energy ("Department") for an accounting deferral related to pension expense under Statement of Financial Accounting Standard 87 ("FAS"). On January 7, 2003, the Department issued a Notice of Inquiry that set January 13, 2002, as the deadline for submitting comments on the Company's filing. The Boston Gas requests are significantly different from those made by NSTAR and Fitchburg Gas & Electric Light Companies ("Fitchburg") last year.<sup>1</sup> The Department should deny the Company's requests based on the current record since the Company has not demonstrated a *prima facie* case entitling it to the deferral. *North Attleboro Gas Company*, D.P.U. 93-229, p. 7 (1993). The Department should reject the petition or, at a minimum, allow discovery and conduct an evidentiary hearing prior to ruling on the request.<sup>2</sup>

Generally Accepted Accounting Principles ("GAAP") require the Company to record on its financial statements (1) its expected liabilities associated with its pension plan and (2) the assets associated with the associated trust funds. The pension accounting involves actuarial expectations of the returns on the trust funds, the rise in health care costs, the mortality of the employees, and the expected discount rate. All of these assumptions change over time, and therefore, the Company's pension liability changes over time. The annual pension liability

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<sup>1</sup> NSTAR requested accounting deferrals for both its pensions, FAS 87, and its post-retirements other than pensions costs and liabilities, FAS 106.

<sup>2</sup> See Department's General Counsel Letter, December 20, 2002, DTE 02-78.

changes flow through to the Company's bottom line and affect its reported earnings from year to year. However, these changes may have little or no effect on the actual cash flow or out-of-pocket costs that the Company will incur in any given year. The Company proposes that the Department, until it may otherwise order, allow the Company to (a) defer, and record as a regulatory asset or liability, the difference between the level of the pension expenses that are included in rates and the amounts that must be booked in accordance with FAS 87; and (b) defer as a regulatory asset the amount of its current and future Additional Minimum Liability ("AML") to reflect the Company's ability to recover in rates over time its actual pension liability.

The Company's requests come after the close of the calendar year 2002, beyond the point when both NSTAR and Fitchburg insisted they had to have Department approval in order to close their books and establish the regulatory asset. Based on those representations, Boston Gas's request can only apply to the 2003 income statement and balance sheet results.<sup>3</sup> Since these amounts cannot be known until the end of this year, it is impossible to know whether the requested deferral amounts are extraordinary;<sup>4</sup> if, in the case of the ALM, they will exist at all at December 31, 2003; or if they will cause significant financial harm to the Company.

The Company's request also raises questions under the Department ordered "rate freeze" associated with the KeySpan merger. *Eastern Enterprises / Colonial Gas Company*, DTE 98-128 (1999).<sup>5</sup> With the acquisitions of Essex County Gas Company ("Essex Gas") and Colonial

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<sup>3</sup> Both of the Company's requests for deferral only refer to the future tense:

- (i) Until otherwise ordered by the Department, the Company *will defer*, and record as a regulatory asset or liability, the difference between the level of the pension expense that is included in rates and the amount that must be booked in accordance with FAS 87, and
- (ii) Until otherwise ordered by the Department, the Company *will defer* as a regulatory asset the amount of its current and future AML to reflect the Company's ability to recover in rates over time its actual pension liability.

Boston Gas Petition, January 3, 2003, p. 3 (emphasis added).

<sup>4</sup> The Company, without any documentary support, claims to have made \$61 million in pension fund contributions in the last two years. The Department's precedent for Boston Gas uses five years of contributions, meaning that the appropriate average amount that might be included in rates would be closer to \$12 million. *Boston Gas Company*, D.P.U. 96-50 (Phase I), p. 81-82 (1996).

<sup>5</sup> The Attorney General has appealed the merger decisions in *Eastern Enterprises / Colonial Gas Company*, DTE 98-128 (1999) and frames his arguments, as he must, in this case with the understanding that the Department's order is in effect until modified or overturned by the Massachusetts Supreme Judicial Court. As the appeal is still pending, nothing in these comments should be construed as an

Gas Company (“Colonial Gas”), the vast majority of the pension expenses appear on the books of Boston Gas without allocations to the acquired companies, thus greatly overstating the actual contributions and costs associated with Boston Gas customers. It now appears that Boston Gas seeks ongoing accounting deferrals of Essex Gas and Colonial Gas expenses for periods covered by the freeze and beyond. According to Department precedent, however, a utility may not defer a cost during the period covered by a rate settlement that fixes rates unless the rate settlement agreement specifically allows the deferral. *North Attleboro Gas*, at p. 6 (denial of deferral request since expense occurred during period of settlement and expense did not qualify as an exogenous cost). Through the settlement, a company's election to limit its rates for a number of years also “forecloses its ability to file for and therefore recover rates beyond those specified” in the agreement. *Id.*

The Department should also deny the Company’s request for the deferral of the amount of its current and future AML because the Company has not shown that this amount either is extraordinary or exists at all.<sup>6</sup> The Company, in its letter to the Department, does not claim to have any amount of AML. It is, therefore, impossible for the Department to approve the Company’s request, since it makes no showing that this amount is extraordinary or even exists, nor can it show any significant financial harm as required under *North Attleboro Gas*.

For all these reasons, the Department should deny both of the Company’s requests for accounting deferrals since neither of the requests meets the *North Attleboro Gas* standards for a deferral. In the alternative, the Department should hold evidentiary hearings to obtain evidence and testimony regarding this new area of cost recovery.

Sincerely,

Joseph W. Rogers  
Division Chief  
Utilities Division

cc: Service list

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adverse admission or waiver of any legal or factual argument that the Attorney General may make in the pending appeal.

<sup>6</sup> The Department should deny the request to defer the AML because the Department has never included this cost in the cost of service for determining rates, and it would lead to a double recovery of pension costs if the Department includes this non-cash item in the determination of rates along with the regular pension cost component requested in the Company’s first deferral request.

